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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF: J.M.S.,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 82A04-0610-JV-605

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APPEAL FROM THE VANDERBURGH SUPERIOR COURT

The Honorable Brett J. Niemeier, Judge

Cause No. 82D01-0604-JD-00150

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**June 25, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

J.M.S. appeals the juvenile court's adjudication that she is a delinquent child for committing an act that would be Battery With a Deadly Weapon, a Class C felony, if committed by an adult. J.M.S. contends the juvenile court erred in concluding that the State presented sufficient evidence to rebut her claim of self-defense. Finding that the State did present sufficient evidence to rebut J.M.S.'s self-defense claim, we affirm.

## **Facts and Procedural History**

On April 18, 2006, J.M.S., her sister H.S., and two other people ("J.M.S.'s group") were arguing outside the home of Daisy Peralta ("Peralta") with M.C., the mother of M.C., and two other people ("M.C.'s group"). H.S. made derogatory statements about M.C.'s mother, and M.C. confronted H.S. in the street. After H.S. attempted to run from M.C., M.C. chased and eventually caught H.S. in Peralta's backyard, and the two girls began fighting. At one point, M.C. climbed on top of H.S., who was on the ground, and began punching her. Members of J.M.S.'s group were not able to pull M.C. off of H.S. At that point, J.M.S. stabbed M.C. in the back with a knife, causing M.C. to collapse.

M.C. was hospitalized for five days after the stabbing, and four of those days were spent in intensive care. She suffered a collapsed lung and had two surgeries to repair the damage. There is no evidence that anyone in M.C.'s group was armed or that H.S. suffered any injuries during the fight.

The State filed a delinquency petition alleging that J.M.S. is a delinquent child for having committed Battery With a Deadly Weapon, a Class C felony<sup>1</sup> when committed by an adult. The juvenile court rejected J.M.S.'s claim of self-defense because she used deadly force that was unreasonable under the circumstances, and the court found that J.M.S. committed the delinquent act of Battery With a Deadly Weapon. J.M.S. now appeals.

### **Discussion and Decision**

On appeal, J.M.S. argues that the juvenile court erred in finding that the State presented sufficient evidence to prove beyond a reasonable doubt that she did not act in self-defense. Specifically, J.M.S. contends that her actions fell within the legal definition of self-defense because they were necessary and reasonable to protect her sister, H.S., from the imminent use of unlawful force and serious bodily injury. We disagree.

We review a challenge to the sufficiency of the evidence to rebut a claim of self-defense using the same standard as for any claim of insufficient evidence. *Wilson v. State*, 770 N.E.2d 799, 801 (Ind. 2002). That is, we neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* If there is sufficient evidence of probative value to support the conclusion of the trier-of-fact, the adjudication will not be disturbed. *Id.* If a defendant is convicted despite his claim of self-defense, this Court will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. *Id.* at 800-01.

A valid claim of defense of oneself or another person is legal justification for an

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<sup>1</sup> A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery as a Class C felony if it results in serious bodily injury to any other person or if it is committed by means of a deadly weapon. Ind. Code § 35-42-2-1(a)(3).

otherwise criminal act. Ind. Code § 35-41-3-2(a); *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). However, the amount of force an individual may use in defense must be proportionate to the situation. *Hollowell v. State*, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999). When a person uses more force than is reasonably necessary under the circumstances, the right of self-defense is extinguished. *Id.* A person is justified in using deadly force only if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. I.C. § 35-41-3-2(a).

Here, the testimony of those present and the circumstantial evidence presented by the State are enough to allow a fact-finder to reasonably conclude that J.M.S.'s actions were not reasonable under the circumstances and that the State presented sufficient evidence to rebut J.M.S.'s claim of self-defense. Multiple witnesses testified that they saw J.M.S. brandishing a knife, and two witnesses testified they saw J.M.S. stab M.C. in the back unexpectedly. Up to that point, the altercation had only involved mutual fist-fighting between H.S. and M.C., and no one in M.C.'s group had utilized a weapon during the fight.<sup>2</sup> There is no evidence that H.S. suffered any injuries from fighting with M.C. or that she was ever in danger of suffering serious injuries. There is also no evidence that M.C. was armed or ever indicated that she was armed. J.M.S. simply asks us to reweigh the evidence, which we will not do. *See Wilson*, 770 N.E.2d at 801.

Affirmed.

SULLIVAN, J., and ROBB, J., concur.

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<sup>2</sup> M.C.'s mother picked up a broom and struck J.M.S. with it *after* M.C. was stabbed.